

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

REBECCA T. SHUMYE,

No. C-06-3322 MMC

Plaintiff,

**ORDER DENYING PLAINTIFF'S MOTION
TO AUGMENT RECORD ON APPEAL**

v.

SAMUEL D. FELLEKE,

Defendant

The Court is in receipt of plaintiff's "Ex Parte Motion to Augment Record on Appeal," filed December 15, 2008. Having read and considered the motion, the Court rules as follows.

First, to the extent plaintiff requests that the Clerk of the Court, at this time, send to the Ninth Circuit Court of Appeals the original file, the motion is DENIED as premature. The "record on appeal" automatically consists of all "original papers and exhibits filed in the district court," see Fed. R. App. P. 10(a), and the Clerk of the Court will send the original file, or any original documents therein, to the Ninth Circuit Court of Appeal upon their request.

Second, to the extent plaintiff seeks to augment the district court record by adding thereto the "ceiled [sic] deposition of Samuel D. Felleke and the authenticated documents," the motion is DENIED, for the reason plaintiff fails to identify such deposition and

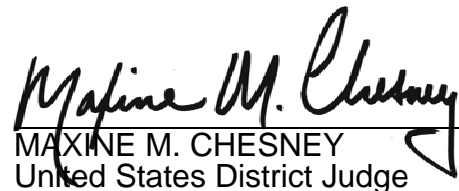
1 documents with any specificity and, further, fails to state when any such document was
2 submitted to the Court and not filed, or to otherwise explain why they should now be made
3 part of the district court record.

4 Third, to the extent plaintiff seeks to augment the district court record by adding
5 thereto the reporter's transcript of proceedings conducted October 6, 2008, or,
6 alternatively, portions of such transcript, the motion is DENIED as moot, for the reason that
7 the entire reporter's transcript of such proceeding has been filed. (See Docket No. 216.)

8 Fourth, to the extent plaintiff seeks to augment the district court record by adding
9 thereto the "Draft of Shumye oral argument [that] was given to the court reporter right after
10 the hearing as an Exhibit and is not included with the courts reports transcript," the motion
11 is DENIED. Any such draft, if given by plaintiff to the court reporter, was not admitted at
12 the hearing conducted October 6, 2008 or otherwise made part of the record, and was not
13 provided to the Court at the time the matter was decided.

14 **IT IS SO ORDERED.**

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16 Dated: December 19, 2008


MAXINE M. CHESNEY
United States District Judge